

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 05-O-04748
)	
BENJAMIN TAE WOUN LEE,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 169034,)	
)	
<u>A Member of the State Bar.</u>)	

PERTINENT PROCEDURAL HISTORY

After the State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) on September 21, 2006, in case no. 05-O-04748, respondent Benjamin Tae Woun Lee (respondent) sought to participate in the State Bar Court's Alternative Discipline Program (ADP) and the State Bar of California's Lawyer Assistance Program (LAP).

On October 30, 2006, respondent contacted the LAP to assist him with his mental health issues, and on May 9, 2007, respondent executed a Participation Plan with the LAP.

On October 31, 2006, Judge Richard A. Honn of the State Bar Court, Hearing Department, issued an order pursuant to a status conference held on October 30, 2006, granting respondent's oral motion for referral to the ADP, and the matter was referred forthwith to the undersigned judge.

On February 23, 2007, respondent submitted a declaration to the court which established a nexus between his mental health issues and his misconduct. The parties entered into a Stipulation Re Facts and Conclusions of Law on May 7, 2007. On December 18, 2007, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract), and the court lodged its Confidential Statement of Alternative Dispositions and Orders, the parties' Stipulation Re Facts and Conclusions of Law,¹ and the executed Contract. On December 21, 2007, the court issued an order accepting respondent into the ADP as of December 18, 2007.

Effective March 9, 2009, the LAP Evaluation Committee terminated respondent's participation in the LAP due to respondent's non-compliance with his LAP Participation Plan.

On April 2, 2009, the court held a status conference in this matter. Thereafter, on April 3, 2009, the court issued an order terminating respondent from the ADP, and this matter was taken under submission for decision.

Accordingly, the court now issues this decision recommending that the Supreme Court impose upon respondent the discipline set forth below in this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this matter, respondent stipulated to misconduct in one matter involving four clients. Respondent stipulated that he repeatedly failed to perform legal services with competence; failed to promptly release to a client, upon termination of employment, all the client papers at the client's request; failed to keep a client reasonably informed of significant developments in a matter in which he had agreed to provide legal services; and failed to cooperate in a disciplinary investigation. In mitigation, respondent has no prior record of discipline and, after the filing of

¹ The court executed an order approving the parties' stipulation on this date.

formal charges, cooperated with the State Bar during the disciplinary proceeding. In aggravation, respondent engaged in multiple acts of misconduct.

The parties' Stipulation Re Facts and Conclusions of Law, including the court's order approving the stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this matter.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing the State Bar's brief on the issue of discipline and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's statement regarding the nexus between his mental health issues and his misconduct in this matter, the court advised the parties of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from or failed to successfully complete the ADP. Respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent was accepted for participation in the ADP.

In determining the appropriate discipline to recommend in this matter if respondent was terminated from or failed to successfully complete the ADP, the court considered the discipline recommended by the State Bar, as well as certain standards and case law. The State Bar

recommended that respondent be suspended for one year; that execution of the suspension be stayed; and that respondent be placed on probation for two years on conditions including a 30-day actual suspension. Respondent agreed with this discipline recommendation. The court also considered standards 1.3, 1.4, 1.5, 1.6, 2.4(b), 2.6(a) and 2.10 and *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831 and *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585.

Effective March 9, 2009, the LAP Evaluation Committee terminated respondent's participation in the LAP due to respondent's non-compliance with his LAP Participation Plan.

On April 2, 2009, the court held a status conference in this matter. Respondent was advised that as he was terminated from the LAP, the court had no alternative but to terminate respondent from the ADP.² Respondent replied that he understood and did not request a hearing or state that he was going to reapply to the LAP. The Stipulation Re Facts and Conclusions of Law was filed on April 2, 2009. Thereafter, on April 3, 2009, the court issued an order terminating respondent from the ADP, and this matter was taken under submission for decision.

Accordingly, the court recommends to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders in the event respondent was terminated from or failed to successfully complete the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent BENJAMIN TAE WOUN LEE be suspended from the practice of law in California for one (1) year; that execution of that period of suspension be stayed; and that he be placed on probation for two (2) years subject to the following conditions:

² The ADP Contract executed by respondent stated, "Respondent understands that, if Respondent's participation in the LAP is terminated without successfully completing the LAP, Respondent's participation in the ADP will be terminated"

1. Respondent must be actually suspended from the practice of law in the State of California for the first 30 days of probation;
2. During the probation period, respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California;
3. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
4. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than

thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

6. Subject to assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
7. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session;
8. Respondent must obtain an examination of his mental and physical condition with respect to his mental health issues pursuant to rule 184 of the Rules of Procedure of the State Bar of California (Rules of Procedure) from a qualified practitioner approved by the Office of Probation and must comply with any treatment/monitoring plan recommended following such examination. The examination and any further help/treatment/ monitoring recommended by the examining practitioner will be at respondent's own expense. The examination must be conducted no later than thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter.

Help/treatment/monitoring should commence immediately after said examination and, in any event, no later than thirty (30) days after said examination. With each

quarterly report, respondent must furnish to the Office of Probation sufficient evidence, as specified by the Office of Probation, that he is so complying with this condition of probation. Treatment/monitoring must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the examining or treating practitioner determines that there has been a substantial change in respondent's condition, respondent or the State Bar's Office of Probation or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure. The motion must be supported by a written statement from the examining or treating practitioner, by affidavit or under penalty of perjury, in support of the proposed modification.

Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical and confidentiality waivers and access to all of respondent's medical records necessary to monitor this probation condition.

Revocation of any medical/confidentiality waiver is a violation of this condition.

Any medical records obtained by the Office of Probation will be confidential and no information concerning them or their contents will be given to anyone except members of the Office of the Chief Trial Counsel, the Office of Probation, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition;

9. Probation will commence upon the effective date of the Supreme Court order in this matter (Cal. Rules of Court, rule 9.18); and

10. At the expiration of the period of probation, if Benjamin Tae Woun Lee has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

Respondent must provide proof of passage of the Multistate Professional Responsibility Examination (MPRE), administered by the National Conference of Bar Examiners, to the Office of Probation within one (1) year after the effective date of the Supreme Court's final disciplinary order in this matter. Failure to pass the MPRE results in actual suspension without further hearing until passage. (But see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 321(a) & (c).)

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceedings and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom

protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: June 19, 2009.

RICHARD A. PLATEL
Judge of the State Bar Court